

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE COLUMBIA UNIVERSITY
PATENT LITIGATION

MDL No. 1592 (MLW)

This Document Relates To All Actions

**DECLARATION OF DAVID I. GINDLER IN SUPPORT OF COLUMBIA
UNIVERSITY'S MOTION TO STAY LITIGATION PENDING CONCLUSION OF
REEXAMINATION AND REISSUE PROCEEDINGS IN THE PATENT AND
TRADEMARK OFFICE**

I, David I. Gindler, upon oath, declare as follows:

1. I am a partner in the law firm of Irell & Manella LLP, counsel of record for The Trustees of Columbia University in the City of New York ("Columbia"). I am a member in good standing of the State Bar of California. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. Limited discovery has occurred in two of the six actions in this multidistrict litigation.

a. In *Genentech, Inc. v. The Trustees of Columbia University in the City of New York*, No. 04cv10741 MLW (formerly C 03-1603 VRW), Columbia and Genentech have served initial disclosures. Columbia has served interrogatories and document requests. Genentech's responses to the interrogatories consisted of objections and were therefore not substantive. Additionally, Genentech has not yet produced any documents in response to Columbia's document requests. Genentech has served first sets of document requests,

requests for admissions, and interrogatories. Columbia has responded to those requests, and has produced a very small quantity of documents. Genentech has also served a second set of document requests to which Columbia has not yet responded, as well as deposition notices and a subpoena. Judge Walker, to whom this case was assigned before it was transferred pursuant to 28 U.S.C. § 1407, stayed all discovery on December 2, 2003, before Genentech conducted any depositions.

- b. In *Biogen, Inc., Genzyme Corp., and Abbott Bioresearch Center, Inc. v. The Trustees of Columbia University in the City of New York*, No. 03cv11329 MLW, the three plaintiffs have each served initial disclosures. The plaintiffs also jointly served a set of document requests on November 24, 2003. On December 23, 2003, Biogen, Genzyme and Abbott agreed to suspend those requests pending the outcome of Columbia's 28 U.S.C. § 1407 motion to transfer. Columbia has not responded to any of these document requests.

There has been no discovery served in any of the remaining proceedings.

3. None of the plaintiffs in these actions is currently paying royalties to Columbia based on U.S. Patent No. 6,455,275.

4. Attached hereto as Exhibit A is a true and correct copy of a petition filed in the Patent and Trademark Office by the Public Patent Foundation on February 26, 2004, requesting reexamination of the '275 patent pursuant to 35 U.S.C. § 302.

5. Attached hereto as Exhibit B is a true and correct copy of an order received by Columbia from the Patent and Trademark Office on May 10, 2004.

Signed under the pains and penalties of perjury this 10th day of June, 2004, at Los Angeles, California.

/s/ David I. Gindler

David I. Gindler